REMARKS

Status of the Claims

Claims 1-11 are pending in this application. Claims 1 and 5 are independent.

Reconsideration of this application is respectfully requested.

Examiner Interview

Applicant wishes to thank the Examiner for the courtesies extended to Applicant's representative during the telephone interview that was conducted on January 28, 2010. An Examiner Interview Summary has been included with the outstanding Action and indicates the complete substance of that interview. In this regard it indicates that the Examiner requested that claim 2 subject matter be incorporated into claim 1 to secure allowance of this application and that authority to make this change was denied.

Rejections under 35 U.S.C. § 103

A. Claims 1-8 and 10

Claims 1-8 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Onoe et al. (U.S. Patent Application Publication No. 2005/0163130, hereinafter "Onoe") in view of Enns et al. (U.S. Patent Application Publication No. 2006/0098669, hereinafter "Enns"). This rejection is respectfully traversed.

The outstanding Action first asserts that Onoe discloses:

> A transmission device (transmitter for performing packet communication, ¶ [0032], page 1, lines 2-5) conducting communication with predetermined quality ensured, comprising:

> a classification unit (transmitter for adding header and data portion of the packet, ¶ [0015], page 2, lines 1-3) classifying a packet of data to be transmitted (Fig. 5, classify by packets; transmission packets are classified into packets, ¶ [0086], page 6, lines 1-2) according to each packet header (transmission side packet header contains class information, ¶ [0014], page 2, lines 2-4), and

> a determination unit (Fig. 5, relay node detects the packet identifier, ¶ [0015], page 2, lines 4-5) organizing a set of packets having the same packet header as a packet group according to a classified result by said classification unit, and determining whether to be transmitted with a bandwidth guaranteed according to a bit rate of the packet group (packet identifier from the packet header decides the related packet is guaranteed in bandwidth and transfer the related packet in a

bandwidth set at a bandwidth speed of the bandwidth guaranteed packet, ¶ [0015], page 2, lines 5-11).

To whatever extent that ¶ [0032] of Onoe discloses a transmitter device, this transmitter device is clearly not taught to include the separately recited relay nodes that are outside the transmitter device on "a route for packet transfer." The outstanding Action appears to ignore that claim 1 requires that the transmitter device must include the determination unit. Thus, the reliance on the Fig. 5 relay nodes that are outside of the transmission device as readable on the claim 1 determination unit is a clear error in fact finding.

Furthermore, to whatever extent that Onoe teaches using a "guaranteed bandwidth" it is based on the packet identifier from the packet header determining which guaranteed bandwidth queue (Qa, Qb, or Qz) is used **at the repeater node**. As noted above, the "repeater node" is not a part of the transmitter device of ¶ [0032] of Onoe, contrary to the requirement of the present claims. In addition, the packet identifier from the packet header cannot be reasonably equated to the claimed "request **unit**" as further apparently asserted in the outstanding Action.

Apparently realizing that the packet identifier from the packet header does not request "a bandwidth control device to reserve a bandwidth for a packet group determined to be transmitted with a bandwidth guaranteed by said determination unit" (that also must be a part of the transmission device), the outstanding Action turns to¶ [0072] of Enns to try to cure this admitted deficiency.

However, while this ¶ [0072] of Enns may teach providing reserved bandwidth, this "total amount of bandwidth allocated to guarantee traffic **is determined from a configuration file stored in the network management system and can be modified by the network operator**" (emphasis added). There is nothing in this determination from a stored configuration file that even remotely suggests the claim 1 required "request unit requesting a bandwidth control device to reserve a bandwidth for a packet group determined to be transmitted with a bandwidth guaranteed by said determination unit," much less the claimed location of this "request unit."

In addition, the outstanding Action makes no attempt to comply with the MPEP § 706.02(j) requirement that the examiner is to identify "the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter" in order to support a rejection

under 35 U.S.C. 103(a). As explained here, such an explanation is necessary because "[i]t is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply." This is more than mere guidance by the MPEP as 35 U.S.C. § 132 requires that the applicant be notified of the reasons for the rejection of the claim so that he or she can decide how best to proceed. Clearly, setting forth all relied on rationales to support the rejection in a way that gives the applicant a fair opportunity to respond is mandated by the statute and not something that is left to the Examiner's discretion.

This modification identification is particularly relevant here as the intended operation of the Onoe device uses the packet identifier from the packet header to determine which guaranteed bandwidth queue (Qa, Qb, or Qz) is used at the repeater node to provide "guaranteed bandwidth." This raises the question of how the Enns teaching of determining guaranteed bandwidth **"from a configuration file stored in the network management system"** that **"can be modified by the network operator"** would be implemented without changing the basic operating principle of Onoe or rendering the Onoe device unsatisfactory for its intended purpose. See *In re Ratti*, 270 F.2d 810, 813, 123 USPQ 349, 352 (CCPA 1959) and *In re Gordon*, 733 F.2d 900, 221 USPQ 1125, 1127 (Fed. Cir. 1984) that prohibit such modifications.

The above-noted MPEP section further stresses that "[t]o support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985)." This requirement is mirrored by the *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ.2d 1385, 1396 (2007) holding that "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." No such "reasoning" has been presented.

Turning to independent claim 5, this claimed "transmission device is similar to that of claim 1 in that each of the claimed elements of a "classification unit," a "determination unit," and a "request unit" must be a part of the claimed transmission device. In addition, it is again noted that the Onoe transmitter device is clearly not taught to include the separately recited relay nodes

that are outside the transmitter device on "a route for packet transfer." The outstanding Action again commits error in ignoring that claim 1 requires that the transmitter device must include the determination unit. Thus, the reliance on the Fig. 5 relay nodes that are outside of the transmission device as readable on the claim 5 "determination unit" is again a clear error in fact finding just as it was relative to claim 1.

Furthermore, and as noted above, to whatever extent that Onoe teaches using a "guaranteed bandwidth" it is based on the packet identifier from the packet header determining which guaranteed bandwidth queue (Qa, Qb, or Qz) is used **at the repeater node**, that is not a part of the transmitter device of ¶ [0032] of Onoe. In addition, the packet identifier from the packet header cannot be reasonably equated to the claimed "request **unit**," all as noted above.

In addition, independent claim 5 adds specific requirements as to the operation of the "determination unit" that must calculate "a buffer capacity required when a packet group is to be transmitted in a specific bandwidth" by "performing the calculation with the bandwidth changed, deriving a relationship between a required bandwidth and a required buffer capacity, and determining whether the packet group is a packet group to be transmitted with a bandwidth guaranteed from said relationship."

Even if it can be said that ¶ [0015] and ¶ [0018] of Onoe suggest a buffer for each queue, and ¶ [0011] of Onoe teaches that "packets indicated by bandwidth guarantee of data 100 and 150 are represented by numerals proportional to the guaranteed bandwidth," as urged in the paragraph bridging pages 8 and 9 of the outstanding Action, there is absolutely no reasonable teaching or suggestion to be found in these disjointed teachings pointing to the above-noted independent claim 5 "determination unit" determining the above-noted "buffer capacity required when a packet group is to be transmitted in a specific bandwidth" in the manner specified (by "performing the calculation with the bandwidth changed, deriving a relationship between a required bandwidth and a required buffer capacity, and determining whether the packet group is a packet group to be transmitted with a bandwidth guaranteed from said relationship").

Moreover, the claim 5 "request unit requesting a bandwidth control device to reserve a bandwidth for a packet group" is like the above-noted similar limitation of claim 1. Thus, it also must be a part of the transmission device and not be simply reflective of queues at the relay

nodes to provide different preset guaranteed bandwidths. Once again the deficiencies of Onoe in these regards are not cured by ¶ [0072] of Enns.

As noted above, to whatever extent that ¶ [0072] of Enns may teach providing reserved bandwidth, this "total amount of bandwidth allocated to guarantee traffic **is determined from a configuration file stored in the network management system and can be modified by the network operator**" (emphasis added). There is nothing in this determination from a stored configuration file that even remotely suggests the claim 5 required "request unit," much less the claimed location of this "request unit."

Furthermore, the outstanding Action again makes no attempt to comply with the above-noted MPEP § 706.02(j) requirement that the examiner is to identify "the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter" in order to support a rejection under 35 U.S.C. 103(a).

This modification identification is again particularly relevant here as the intended operation of the Onoe device requires the use packet identifier from the packet header to determine which guaranteed bandwidth queue (Qa, Qb, or Qz) to use at the repeater node to provide "guaranteed bandwidth." This raises the question of how the Enns teaching of determining guaranteed bandwidth "**from a configuration file stored in the network management system**" that "**can be modified by the network operator**" would be implemented without changing the basic operating principle of Onoe or rendering the Onoe device unsatisfactory for its intended purpose. See again the above-noted *Ratti* and *Gordon* decisions that prohibit such modifications.

The above-noted *Clapp* and *KSR* decisions requirement for "reasoning" are again noted to be relevant as to the required "reasoning" again being lacking.

Accordingly, reconsideration and withdrawal of the rejection of independent claims 1 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Onoe in view of Enns are respectfully requested.

Furthermore, as claims 2-4 and 10 depend directly or indirectly from independent claim 1 while claims 6-8 depend directly or indirectly from independent claim 5, these dependent claims are respectfully submitted to be improperly rejected under 35 U.S.C. § 103(a) as being

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unpatentable over Onoe in view of Enns for at least the same reason as noted above as to parent independent claims 1 and 5.

Accordingly, reconsideration and withdrawal of the improper rejection of dependent claims 2-4, 6-8, and 10 under 35 U.S.C. § 103(a) as being unpatentable over Onoe in view of Enns is also respectfully requested.

B. Claims 9 and 11

Claims 9 and 11 stand rejected under 35 U.S.C. § 103(a) as being "anticipated" by Onoe in view of Enns in further view of Rogers (U.S. Patent Application Publication No. 2001/0036181). This rejection is traversed.

It is first noted that the word "anticipated" appears to have been intended to be "unpatentable" to conform to standard usage in a rejection under 35 U.S.C. § 103(a).

Secondly, it is noted that Rogers is cited as to the subject matter added by claims 9 and 11 and does not cure the deficiencies noted above as to the reliance on Onoe in view of Enns with respect to parent independent claim 1. Accordingly, claims 9 and 11 patentably define over the applied references for at least the same reason that parent independent claim 1 does. Thus, reconsideration and withdrawal of this improper rejection of claims 9 and 11 under 35 U.S.C. §103(a) as being allegedly unpatentable over Onoe in view of Enns in further view of Rogers are respectfully requested.
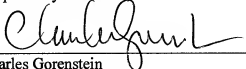
Conclusion

As all of the stated grounds of rejection have been properly traversed, it is respectfully requested that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Raymond F. Cardillo, Jr., Registration No. 40440, at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: **May 12, 2011**

Respectfully submitted,

By _____
Charles Gorenstein
Registration No.: 29271
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, VA 22040-0747
703-205-8000